

HOUSE BILL NO. 1279

Introduced by

Representatives Wrangham, Carlisle

Senator Klein

1 A BILL for an Act to create and enact a new subsection to section 43-33-14 of the North Dakota
2 Century Code, relating to duties of the board of hearing aid specialists; and to amend and
3 reenact section 43-33-01, subsection 2 of section 43-33-02, section 43-33-02.1, subsection 2 of
4 section 43-33-03, section 43-33-04, subsection 2 of section 43-33-08, sections 43-33-10 and
5 43-33-11, subsection 2 of section 43-33-12, section 43-33-15, subsection 2 of section 43-37-03,
6 and subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code,
7 relating to hearing aid specialists.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 43-33-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-33-01. Definitions.** As used in this chapter, unless the context requires otherwise:

- 12 1. "Board" means the board of hearing ~~instrument dispensers~~ aid specialists.
- 13 2. "Hearing aid" or "hearing instrument" means any wearable instrument or device
14 designed for or offered for the purpose of aiding or compensating for impaired
15 human hearing and any parts, attachments, or accessories including earmold, but
16 excluding batteries, cords, and earmold tubing.
- 17 3. "License" means a license issued under this chapter to a hearing ~~instrument~~
18 ~~dispensers~~ aid specialist.
- 19 4. "Licensee" means a hearing aid specialist licensed under this chapter.
- 20 5. "Practice of fitting and dispensing hearing instruments" means the measurement of
21 human hearing to determine hearing loss by means of an audiometer or by any
22 means solely for the purpose of making selections, adaptations, repairs, or sale of
23 hearing instruments. The term also includes the making of impressions for
24 earmolds. A ~~dispenser~~ licensee, at the request of a physician or member of

1 related professions, may make audiograms for the professional's use in
2 consultation with the hard-of-hearing.

3 ~~5-~~ 6. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or
4 any other contract. This excludes wholesale to distributors or dispensers.

5 ~~6-~~ 7. "Trainee permit" means a temporary permit issued while an applicant is in training
6 to become a ~~licensed hearing instrument dispenser~~ licensee.

7 **SECTION 2. AMENDMENT.** Subsection 2 of section 43-33-02 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 2. This chapter does not prohibit a person maintaining an established business
10 address from engaging in the business of selling or offering for sale hearing
11 instruments at retail without a license if that person employs only properly licensed
12 individuals in the direct sale and fitting of such products. Such persons shall file
13 annually with the board a list of all ~~licensed hearing instrument dispensers~~
14 licensees directly or indirectly employed by it. Those persons shall also file with
15 the board a statement on a form approved by the board that they submit
16 themselves to the rules of the board and the provisions of this chapter.

17 **SECTION 3. AMENDMENT.** Section 43-33-02.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-33-02.1. Conviction not bar to licensure - Exceptions.** Conviction of an offense
20 does not disqualify a person from licensure under this chapter unless the board determines that
21 the offense has a direct bearing upon a person's ability to serve the public as a hearing
22 ~~instrument dispenser~~ aid specialist, or determines that, following conviction of any offense, the
23 person is not sufficiently rehabilitated under section 12.1-33-02.1.

24 **SECTION 4. AMENDMENT.** Subsection 2 of section 43-33-03 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. The receipt must bear in no smaller type than the largest used in the body copy
27 portion the following: Any examination or representation made by a licensed
28 hearing ~~instrument dispenser~~ aid specialist in connection with the fitting and selling
29 of this hearing instrument is not an examination, diagnosis, or prescription by a
30 person licensed to practice medicine in this state and therefore, must not be
31 regarded as medical opinion or advice.

1 **SECTION 5. AMENDMENT.** Section 43-33-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-33-04. Persons and practices not affected.** This chapter does not prevent or
4 restrict:

- 5 1. A person from engaging in the practice of measuring human hearing for the
6 purpose of selection of hearing instruments if the person or organization employing
7 that person does not sell hearing instruments.
- 8 2. A person employed as a hearing ~~instrument dispenser~~ aid specialist by the federal
9 government from engaging in the practice of fitting and dispensing hearing
10 instruments if the person performs the practice solely within the confines or under
11 the jurisdiction of the government of the United States.
- 12 3. Activities and services of a person pursuing a course of study leading to a graduate
13 degree in audiology at a college or university if the activities or services are under
14 the direct supervision of a ~~licensed dispenser~~ licensee, constitute a part of a
15 supervised course of study, and the person is designated an audiology intern or
16 trainee or by another title clearly indicating the training status appropriate to the
17 level of training.

18 **SECTION 6. AMENDMENT.** Subsection 2 of section 43-33-08 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 2. Upon receiving an application accompanied by a fee as established by the board,
21 the board shall issue a trainee permit that permits the applicant to engage in the
22 training of fitting and sale of hearing instruments for a period of one year under the
23 direct supervision of a ~~person holding a valid hearing instrument dispenser license~~
24 licensee. The trainee shall train in the same place of business as that of the
25 supervisor and must complete at least thirty hours of book and visual aid training
26 and at least ten hours of training with an audiometer, as well as a minimum of one
27 week with the supervisor before the trainee's first public contact alone. A trainee
28 may not deal with the public outside the supervisor's office or place of business
29 until these requirements have been fulfilled. After this initial period of training, the
30 trainee must spend one day per week in the office or place of business with the
31 supervisor. The trainee may not make any sale of a hearing instrument without

1 first consulting with the supervisor and obtaining the supervisor's approval for the
2 sale.

3 **SECTION 7. AMENDMENT.** Section 43-33-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-33-10. Notice to board of place of business - Notice to holders of license**
6 **licensees - How given by board.**

- 7 1. A ~~person who holds a license~~ licensee shall notify the board in writing of a regular
8 address of the place or places where the ~~person~~ licensee engages or intends to
9 engage in the fitting or the sale of hearing instruments.
- 10 2. The board shall keep a record of the place of business of ~~persons who hold~~
11 ~~licenses~~ licensees.
- 12 3. Any notice required to be given by the board to a ~~person who holds a license~~
13 licensee must be mailed by certified mail at the address of the last place of
14 business of which the person has notified the board.
- 15 4. The board shall keep a record of the trainees, their place of training, and their
16 supervisors.

17 **SECTION 8. AMENDMENT.** Section 43-33-11 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-33-11. Annual renewal of license - Fees - Continuing education - Effect of**
20 **failure to renew.** Each ~~person who engages in the fitting and sale of hearing instruments~~
21 licensee shall annually, before the expiration of the person's license, pay to the board the
22 proper fees, together with a certificate showing attendance for a minimum of ten hours of
23 continuing education per calendar year at schools or seminars approved by the board as
24 defined by rule, pertaining to the fitting and sales of hearing instruments, for a renewal of a
25 license. A thirty-day grace period must be allowed after the expiration of a license when a
26 license may be renewed on payment of the proper fees together with the certificate of
27 continuing education to the board. After expiration of the grace period, the board may renew a
28 license upon the payment of the proper fees together with the certificate of continuing education
29 to the board. A ~~person~~ licensee who applies for renewal, whose license has expired, may not
30 be required to submit to an examination as a condition to renewal, if the renewal application is

1 made within two years from the date of the expiration and is accompanied with a certificate of
2 continuing education during the twelve months immediately preceding the date of application.

3 **SECTION 9. AMENDMENT.** Subsection 2 of section 43-33-12 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 2. The board may revoke or suspend a person's license for any of the following
6 causes:

7 a. The conviction of an offense determined by the board to have a direct bearing
8 upon a person's ability to serve the public as a hearing instrument dispenser
9 aid specialist, or the board determines, following conviction of any offense,
10 that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

11 b. Procuring of a license by fraud or deceit.

12 c. Unethical conduct. Unethical conduct means:

13 (1) Obtaining any fee or making any sale by fraud or misrepresentation.

14 (2) Knowingly employing, directly or indirectly, any suspended, or
15 unregistered person to perform any work covered by this chapter.

16 (3) Using, or causing or promoting the use of, any advertising matter,
17 promotional literature, testimonial, guarantee, warranty, label, brand,
18 insignia, or any other representation, however disseminated or
19 published, which is misleading, deceptive, or untruthful.

20 (4) Advertising a particular model or type of hearing instrument for sale
21 when purchasers or prospective purchasers responding to the
22 advertisement cannot purchase the advertised model or type where it is
23 established that the purpose of the advertisement is to obtain prospects
24 for the sale of a different model or type than that advertised.

25 (5) Representing that the service or advice of a person licensed to practice
26 medicine will be used or made available in the selection, fitting,
27 adjustment, maintenance, or repair of hearing instruments when that is
28 not true, or using the word "doctor", "clinic", "audiologist", or similar
29 words, abbreviations, or symbols which tend to connote the medical or
30 audiological profession when that is not accurate, or use of the titles
31 "hearing instrument specialist", "hearing aid specialist", "board-certified

- 1 hearing aid specialist", or "board-certified hearing instrument specialist"
2 when the qualifying requirements have not been met through the
3 ~~national~~ international hearing aid society or national board for
4 certification in hearing instrument sciences.
- 5 (6) Habitual intemperance.
- 6 (7) Gross immorality.
- 7 (8) Permitting another to use the person's license.
- 8 (9) Advertising a manufacturer's product or using a manufacturer's name or
9 trademark that implies a relationship with the manufacturer which does
10 not exist.
- 11 (10) To directly or indirectly give or offer to give, or permit or cause to be
12 given money or anything of value to any person who advises another in
13 a professional capacity as an inducement to influence them or have
14 them influence others to purchase or contract to purchase products sold
15 or offered for sale by a ~~hearing instrument dispenser~~ licensee, or to
16 influence persons to refrain from dealing in the products of competitors.
- 17 (11) Sale of a hearing instrument to a person without adequate and proper
18 audiometric testing.
- 19 (12) Sale of a hearing instrument to a person where the need for a hearing
20 instrument has not been established after adequate and proper
21 audiometric testing.
- 22 d. Conducting business while suffering from a contagious or infectious disease.
- 23 e. Engaging in the fitting and sale of hearing instruments under a false name or
24 alias with fraudulent intent.
- 25 f. For any violation of this chapter.
- 26 g. The fitting and sale of a hearing instrument to any person under eighteen
27 years of age unless within six months before the fitting the person to be fitted
28 has been examined by a physician and audiologist to determine whether there
29 exist any physical deficiencies that would prohibit the effective use of a
30 hearing instrument.

1 **SECTION 10.** A new subsection to section 43-33-14 of the North Dakota Century Code
2 is created and enacted as follows:

3 At the board's discretion, provide funds to the North Dakota hearing aid society to
4 assist in providing continuing education for licensees.

5 **SECTION 11. AMENDMENT.** Section 43-33-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-33-15. Board of hearing ~~instrument dispensers~~ aid specialists.**

- 8 1. There is established a board of hearing ~~instrument dispensers~~ aid specialists to
9 carry out this chapter.
- 10 2. Members of the board must be residents of the state. The board consists of four
11 ~~hearing instrument dispensers~~ licensees who are not audiologists or
12 otolaryngologists, one otolaryngologist, three licensees who are audiologists, and
13 two consumers. Each hearing ~~instrument dispenser~~ aid specialist on the board
14 must be primarily engaged as a hearing ~~instrument dispenser~~ aid specialist, must
15 have at least five years of experience in this state, and must hold a valid license as
16 a hearing ~~instrument dispenser~~ aid specialist.
- 17 3. The governor shall appoint the members of the board. The term of office of each
18 member is four years. Before a member's term expires, the governor shall appoint
19 a successor to assume the member's duties at the expiration of the term. A
20 vacancy in the office of a member must be filled by appointment for the unexpired
21 term. The members shall ~~annually~~ designate annually one member to serve as
22 chairman and another to serve as secretary-treasurer. ~~No~~ A member of the board
23 may not be reappointed to the board until at least one year after the expiration of
24 that person's second term of office.
- 25 4. Except for the secretary-treasurer, each member shall serve without compensation
26 except mileage and travel expenses while engaged in the performance of the
27 duties of the office as is provided for state employees. The board shall establish
28 the amount of compensation for the secretary-treasurer.

29 **SECTION 12. AMENDMENT.** Subsection 2 of section 43-37-03 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 1 2. A hearing aid ~~dealer~~ specialist from engaging in testing of hearing and other
2 practices and procedures used solely for the fitting and selling of hearing aids in
3 this state as provided in chapter 43-33.

4 **SECTION 13. AMENDMENT.** Subdivision m of subsection 1 of section 43-46-01 of the
5 North Dakota Century Code is amended and reenacted as follows:

- 6 m. The board ~~for licensing of~~ hearing aid ~~dealers and fitters~~ specialists;